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CRIMINAL LAW—TRIAL—CONDUCT OF JURY—COMMENTS ON DEFENDANT'S FAILURE TO TESTIFY.—In a criminal prosecution, a discussion by the jury of defendant's failure to testify, and a statement by one of them that defendant's counsel was too sharp to put him on the stand, was reversible error. *Fults* v. *State* (1906), — Tex. Crim. App. —, 98 S. W. Rep. 1057.

The decision in this case is based on a statute which reads as follows: "Any defendant in a criminal case shall be permitted to testify in his own behalf therein; but the failure of any defendant to so testify shall not be taken as a circumstance against him; nor shall the same be alluded to or commented upon by the counsel in the case." The court construed this statute to extend to an inference drawn by the jury. *Crown* v. *State,* 16 Tex. Cr. Rep. 60, 93 S. W. 553; *Thorpe* v. *State,* 40 Tex. Cr. App. 346, 50 S. W. 383; *Wilson* v. *State,* 39 Tex. Cr. Rep. 365, 46 S. W. 251. WIGMORE, EVIDENCE, Vol. III, pp. 3146, 3147, § 2272 says, in applying the rule which forbids the drawing of inferences from a claim of privilege. "It clearly forbids *comment by counsel* upon the *accused's failure to testify.* But there is no call for the stringent rule that a *new trial* shall be granted *ipso facto* where comment has been improperly made; the trial judge must be trusted, not only to control counsel, but also to remedy the effect of his impropriety. Nor is it proper to go so far as to instruct the jury (even when no comment has been made) to disregard the inference; it is well enough to contrive artificial fictions for use by lawyers, but the attempt to enlist the layman in the process of nullifying his own reasoning powers is merely futile, and tends toward confusion and a disrespect for the law's reasonableness." For a review of the holdings on this point see the following cases: *Farrell* v. *People,* (1890), 133 Ill. 244, 24 N. E. 423; *State* v. *Stephens* (1885), 67 Ia. 557, 559, 25 N. W. 777; *State* v. *Carnagy* (1898), 106 Ia. 483, 76 N. W. 805; *State* v. *Johnson* (1898), 50 La. Ann. 138, 23 So. Rep. 199; *State* v. *Landry* (1892), 85 Me. 95, 26 Atl. 998; *State* v. *Pearce* (1894), 56 Minn. 226, 234, 57 N. W. 652, 1062; *State* v. *Robinson* (1893), 117 Mo. 649, 663, 23 S. W. 1066; *Metz* v. *State* (1895), 46 Nebr. 547, 65 N. W. 190. Note 6, § 2272. WIGMORE, EVIDENCE, Vol. III, p. 3147, says: "In one state the final absurdity has been committed of forbidding the *jury* even to discuss the subject among themselves: (1898), *Wilson* v. *State,* 39 Tex. Cr. Rep. 365, 46 S. W. 251.

DIVORCE—CUSTODY OF MINOR CHILDREN—DUTY TO SUPPORT—FATHER'S MISCONDUCT.—By a decree of divorce obtained by defendant in error she was awarded the custody of her two minor children and an allowance of $50 per month alimony for her support. No provision was made in the decree for the support of the children. In an action to recover for money expended in the support and maintenance of the son and daughter until they reached their majority, the husband pleaded the judgment recovered in the divorce proceeding in bar of the action. *Held,* that the father was still liable for the support of his children, whose rights were not concluded by the judgment in the divorce suit to which they were not parties. *Graham* v. *Graham* (1907), — Colo. —, 88 Pac. Rep. 852.

The decision in the principal case announcing the rule that the divorce of